

APPEAL NO. 020174
FILED FEBRUARY 27, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 2, 2002. The hearing officer determined that the respondent's (claimant) compensable injury of _____, is a producing cause of the lumbar spine disc syndrome and right radiculopathy after June 1, 2001, and that the claimant had disability beginning July 19, 2001. The appellant (carrier) appealed, arguing that the hearing officer erred in determining the producing cause and disability issues. The claimant filed a response urging affirmance.

DECISION

Affirmed.

The claimant testified that he sustained an injury to his low back on _____, while working as a welder for employer 1 and that he sought medical treatment from Dr. C. A functional capacity evaluation (FCE) dated June 7, 2001, reflected that the claimant could return to work without restrictions. The claimant testified that he [obtained] employment as a welder with employer 2 in July 2001, and that after three days of work his low back began to hurt. The claimant testified that he again sought medical treatment from Dr. C for his back. The carrier contends that the claimant had complete resolution of his symptoms from his _____, injury, as evidence by the FCE and his return to full duty work; and, that the claimant's additional low back problems were sustained on _____, when he was working for employer 2. The parties stipulated that benefits, including temporary income benefits, were paid through June 12, 2001.

The hearing officer did not err in determining that the claimant's compensable injury of _____, is a producing cause of the lumbar spine disc syndrome and right radiculopathy after _____. The hearing officer was persuaded by the claimant's testimony and the medical reports in evidence, and relied on several Appeals Panel decisions to conclude that the claimant's _____, injury is the producing cause of the claimant's lumbar disc syndrome and right radiculopathy. It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We are satisfied that the evidence is sufficiently supportive of the challenged determination. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Disability is likewise a question of fact to be determined by the hearing officer. Texas

Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. "Disability" is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The claimant bears the burden of establishing that a compensable injury was a producing cause of his disability. Under the facts of this case, we do not perceive error in the hearing officer's resolution of the disability issue. Cain, *supra*.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 N. ST. PAUL STREET
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge